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KANSAS HEALTH POLICY AUTHORITY

House Appropriations Committee
Consideration of the Nursing Home Provider Tax

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Chairman Yoder and Members of the House Appropriations Committee:

My name is Joe Tilghman. I am a retired federal employee with 34 years experience working with the Medicare and Medicaid programs at the federal level. I am currently the chairman of the Kansas Health Policy Authority Board.

I am here this morning to testify regarding the consideration of a Nursing Home Provider Tax in the Kansas Medicaid program.

This issue has been simmering in Kansas for a number of years, and rather than simply walk away from it, the KHPA Board chose to look at it earlier this year. We felt this was appropriate in light of the current budget problems confronting the State and the possibility of this becoming a source of additional federal revenue to the State.

In the way of background the most current data I have shows that 41 states have one or more forms of a provider tax in place for their respective Medicaid programs:

30 have a nursing home tax
18 have a hospital tax (including Kansas)
22 have an ICF-MR tax
14 have an HMO tax

Workgroup

We convened a workgroup to look at this issue about six months ago. It is chaired by myself and the Secretary of the Department of Aging, initially Secretary Greenlee, then Secretary Kennedy after her departure. It

includes representatives from both the for-profit and non-profit state associations, as well as the Medicaid waiver community. Staff from KHPA and KDOA also participate. All meetings have been open to the public.

The purpose of the workgroup was to determine what a nursing home provider tax should look like in the State of Kansas if the legislature and Governor decide to consider this revenue source as a way to mitigate the current budget shortfalls.

To be clear: the Board is not necessarily endorsing such a tax, but rather putting forward an option that we feel is a good model for such a tax if the legislature and Governor choose to go this route.

If we do put forth such a model, it will be a product of the KHPA Board. As such it will be a non-partisan product and will not represent any consensus from the workgroup members, but only the consensus of the KHPA Board.

Workgroup Criteria

While we are not looking for consensus from the participants, we did want to hear their concerns and, where possible, address these in the modeling. By informing ourselves of their concerns we hope to mitigate as much as practical any adverse impact on residents or providers.

The model we will put forth must be approvable by the federal government, i.e., CMS.

The model must meet the policy goals of KDOA, which has the program lead in this area; however, we will not ask KDOA or the Governor's Office to endorse the model although they are welcome to do so. We will not put forward a model that KDOA objects to from a policy viewpoint.

The model should provide savings in State General Funds if practical.

Where we are today

The KHPA Board reviewed two possible models at our September 15 meeting and directed the workgroup to help blend these two models for presentation of a single "final" model for consideration at our November 17 meeting. (There is no Board meeting in October.) The workgroup is meeting this afternoon to review the blended model.

My best guess is that the KHPA Board will forward a suggested model to the legislature following its meeting on November 17.

I can't give you any specifics right now on what this model will look like; however, I can lay out in very broad brush strokes what it will likely accomplish as well as the primary pros and cons of adopting it. Keep in mind, I can't really get "into the weeds" because both the workgroup and the Board have yet to weigh in on the blended model.

I'm going to do this in three pieces. The first piece will lay out in very rough terms the likely trajectory of nursing home payments in the Medicaid program if nothing is done in terms of adopting a provider tax. The second piece will lay out the "pros" of adopting the likely model. And the last piece will lay out the "cons". Keep in mind, at this point these are my personal views and that other parties may present a different perspective … and that this is still very much a work in progress.

What the world will likely look like if we do nothing

Secretary Kennedy can provide you a better glimpse into the crystal ball in this area, but in very broad terms my understanding is that the Medicaid rates for nursing homes were frozen last year due to budget concerns, and could be at risk again this year. KDOA estimates that an inflationary adjustment for Medicaid payments to nursing homes would cost around $16 million in SFY 2011 (about $6.5 million in SGF).

Increases in funding for the Home and Community Based Services Waivers for the frail elderly and developmentally disabled are also at risk.

This will probably not lead to access problems in nursing homes, but could cause some problems (such as waiting lists) in the waiver programs. The world doesn't fall apart, but it certainly doesn't get better … and it will likely get a bit tougher for providers and some waiver recipients.

The nursing home and waiver programs will essentially be "on hold", with no new initiatives to improve quality, reduce the number of unused beds, or expand (or possibly even maintain) the number of people using the waivers.

PROs of a Provider Tax

1) The model will likely generate at least $16 million in revenues from the nursing home tax itself. This, in turn, will generate another $24 million in matching federal funds, for a total of about ***$40 million in new Medicaid funds*** – and this will be done at no cost to State General Funds.

The option we put forward will likely propose that 80 -85% of this funding be returned to the nursing home community. This means that in return for the $16 million they pay in the new tax, they get back between $30 – 34 million. Roughly double what they put in. The Secretary of Aging would have final responsibility for how this funding would be used, but it would likely go towards inflationary adjustments in the Medicaid rates and to drive quality improvements. We also anticipate that the Secretary of Aging would consider input from an advisory council in coming to his decisions regarding the use of these revenues, and that this advisory council would look a great deal like the workgroup we've been dealing with for the past six months.

The remaining balance, $6 – 10 million would be directed to the HCBS waiver programs.

2) The model will ***meet the policy goals of KDOA*** in three ways:

A. By taxing certified beds it will encourage providers to reduce the number of unused beds in the state. This will result in long term savings in health costs.
B. It will provide a means to promote quality improvements in nursing homes using incentive payments.
C. It is designed in such a way as to encourage providers to accept more Medicaid residents.

3) The model will provide a new revenue stream to ***fund the appropriate inflationary adjustment in Medicaid payments to nursing homes*** which entails a total cost of approximately $16 million. Absent the nursing home tax, this adjustment would either not take place due to budget constraints or, if implemented, would cost $6.5 million in SGF. Additionally the model would provide $5 million to drive quality improvements in nursing home care.

4) The model would provide ***$6 – 10 million in new funding for Home and Community Based Waiver services*** for the elderly frail and/or developmentally disabled. Absent this funding these services will likely be cut or held at current levels. Depending on how these funds are used it could save $2.5 – 4 million in SGF or

expand the use of these services without the use of any additional SGF..

5) We can give you a 99% assurance that any model we put forth ***will be approvable by CMS***. However, we will also caution that such approval goes through some very hard scrutiny and that any tinkering with the model may jeopardize its approval by CMS. That's not to say you can't tinker with it, but to strongly suggest that you involve the experts in KDOA to make sure any changes will, in fact, be allowed. As an aside, from the viewpoint of an old fed, I've been very impressed with the expertise KDOA has in this area.

CONs

Now to switch to the downside of the model.

1) The "for profit" nursing homes will likely support the new tax, as will the waiver community (although the waiver folks will likely be more supportive if they receive 20% of the funds rather than 15%). However, the "non-profit" nursing homes will likely continue to oppose any such tax. They have expressed two general concerns during our meetings:

A. Some nursing homes may have to raise their rates to private pay patients since they would like to charge private pay patients less than the Medicaid rate. This is a valid concern, although it is important to note that the option we are developing with the help of KDOA staff allows some of the increases in Medicaid rates to be exempt from the the rule that Medicaid must be lowest payer, and

B. There will be winners and losers, with the losers being those homes with small Medicaid populations. Federal laws for health care taxes virtually require that there will be some losers. I would add that KDOA staff have worked pretty hard to assure that there are many more winners than losers, and that those losses are minimized.

2) There are still details to work out as to how to structure incentive payments to promote quality improvements and there is a question as to whether we are putting enough money on the table to really drive quality improvements. Personally, I'm not too concerned about this and feel confident we can work something out. There are lots of options out there – and whatever we do is going to be better than doing nothing to promote quality care.

Summary

The state has wrestled for years with the concept of a tax on nursing homes. If this were an easy choice, the state would have moved forward long ago. The state's success in providing home and community based services helps lower the role of Medicaid in financing nursing home services, and this may make these sorts of taxes a little more difficult. Clearly there are at least some trade-offs involved in a nursing home tax, and the KHPA Board acknowledges those trade-offs. However, in a year in which state funding for health care services will be at risk, we felt it was important to put options on the table that might help fill the gap.

Our plan is to complete work on an option and present it to the Legislature and the Governor for consideration. We will not promote the option, but I'm sure our staff and KDOA's staff will be available to support the process and to make sure you have the information you need.

This concludes my testimony and I will be happy to stand for questions.